

Overview of Threshold Determinations under SEPA **and** **Threshold Related Guidance from CA, MA and KC**

- **Summary of General Threshold Related Guidance**
 - ***Annie Szvetecz, SEPA Unit, Shorelands & Env. Assistance, Washington Department of Ecology***
- **CAPCOA/CEQA Approaches for Thresholds and Mitigation**
 - ***Jim Wilder, P.E., ICF Jones & Stokes***
- **How CA, MA and KC are Considering Thresholds**
 - ***Matt Kuharic, Program Manager, Climate Change Initiatives, King County***
- **CA Attorney General's CEQA Interpretation and Settlements**
 - ***Hilary Franz, Bainbridge City Council***

Thresholds as Defined by the “Threshold Team”

- Measurement Threshold
 - At what point does a SEPA action account for its climate change impact?
- Significance Threshold
 - At what point, if any, does an action have a significant environmental impact?
- Compliance Threshold
 - At what point has an action mitigated “enough” so it does not have a significant environmental impact?

Summary of General Threshold Related Guidance

- An evaluation of the environmental consequences of a proposal and to determine whether the proposal is likely to have any "significant adverse environmental impact."
- Made by the lead agency
 - documented in either a DNS, MDNS, or a DS and requiring the subsequent preparation of an EIS.

What is "significant"?

- WAC 197-11-794: "a reasonable likelihood of more than a moderate adverse impact on environmental quality."
- Key variables include *severity (or intensity) of impact, context (affected environment) and likelihood of occurrence.*
- A number of marginal impacts may together result in a significant impact.
- "Significant" is often contested in administrative and judicial SEPA appeals due to the lack of specific "thresholds" related to the various kinds of environmental impacts.

Considerations for Lead Agency

- Have likely adverse environmental impacts been identified and mitigation taken into account—particularly those required under development and permit regulations?
- Does the proposal establish a precedent for future actions with significant effects, involve unique and unknown risks to the environment, or may affect public health or safety?
- What are the regulatory gaps or remaining significant adverse environmental impacts that have not been mitigated to a non-significant level?
- Have all or part of the proposal, alternatives, or impacts been analyzed in a previously prepared environmental document, which can be used, adopted, or incorporated by reference?

Add Consideration of Climate Change Impacts

- Cumulative and global impacts
- Quantifiable emissions
- Can consider statewide significance standard
 - Predictability and consistency
- What are options to consider?

CAPCOA/CEQA Approaches for Threshold and Mitigation

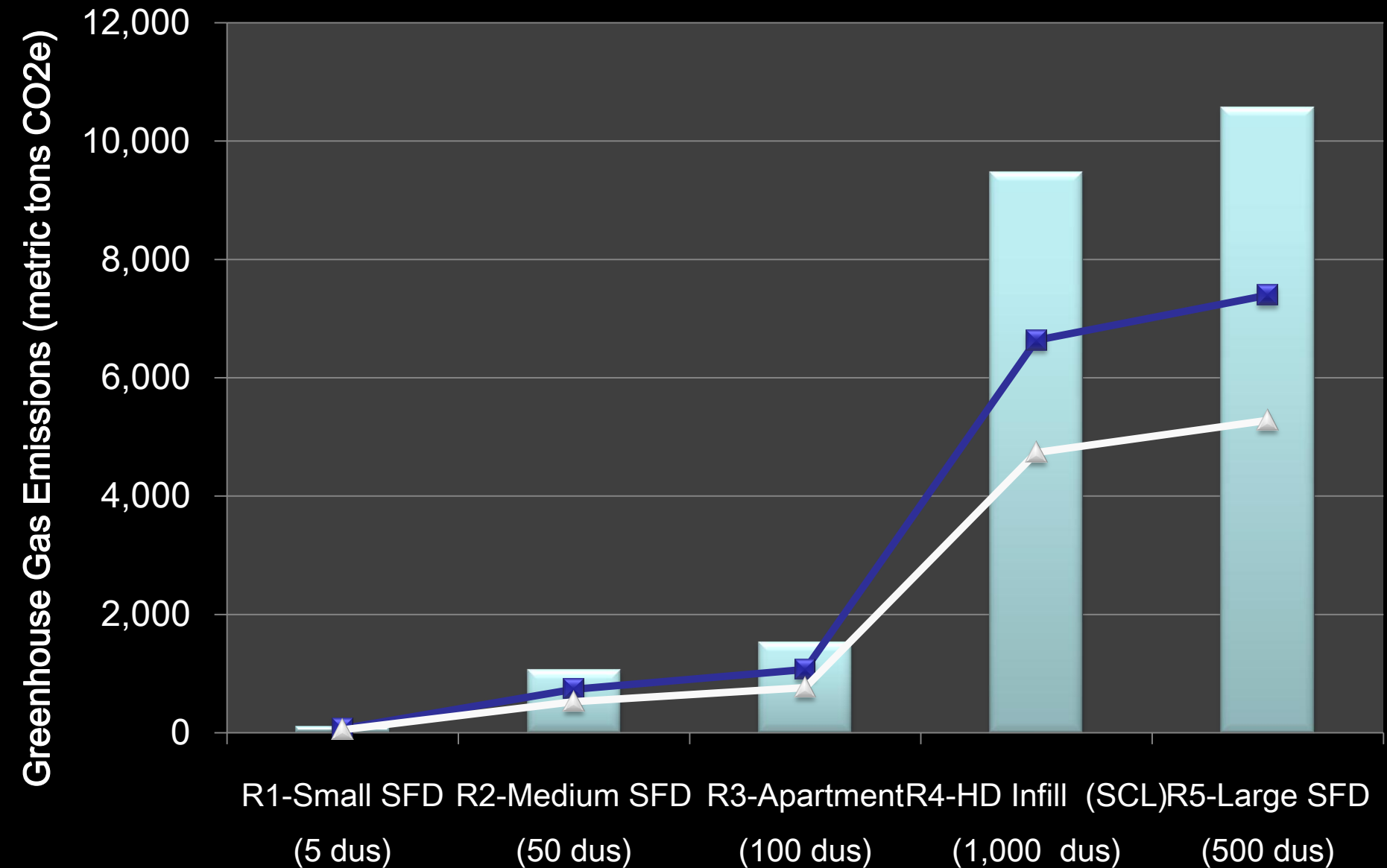
- Approach 1: Uniform % Reduction to Achieve Regulatory Mandate
 - Statewide
 - By Region
 - By Sector (e.g., SIC or NAICS)
- Approach 2: Tiered Thresholds and Mitigation
 - Tier 1: Exempt or Greenlist (easiest mandated mitigation list)
 - Tier 2: Exceeds compliance threshold (tougher mandated mitigation list, then mitigate down to threshold)
 - Tier 3: Can't mitigate to compliance threshold (really tough mandated mitigation list, then purchase offsets to threshold)

CAPCOA Tiered Thresholds

- 2.1: Anything-exceeding-zero threshold (mitigate/offset to zero)
- 2.2: Quantitative tons/year threshold
 - Low end = 900 tpy (90% capture of new residential)
 - High end = 25,000 tpy (CCAR industrial reporting industrial)
- 2.5: Qualitative “unit-based” threshold based on 90% market capture
 - 50 single-family units (90% capture)
 - 30,000 sq. ft. office (90% capture)
- 2.7: Variable quantitative efficiency-based threshold based on xx% below BAU
 - 15 tpy per residential unit (25% below BAU)
 - 50 tpy per 1000 sq. ft. retail (25% below BAU)

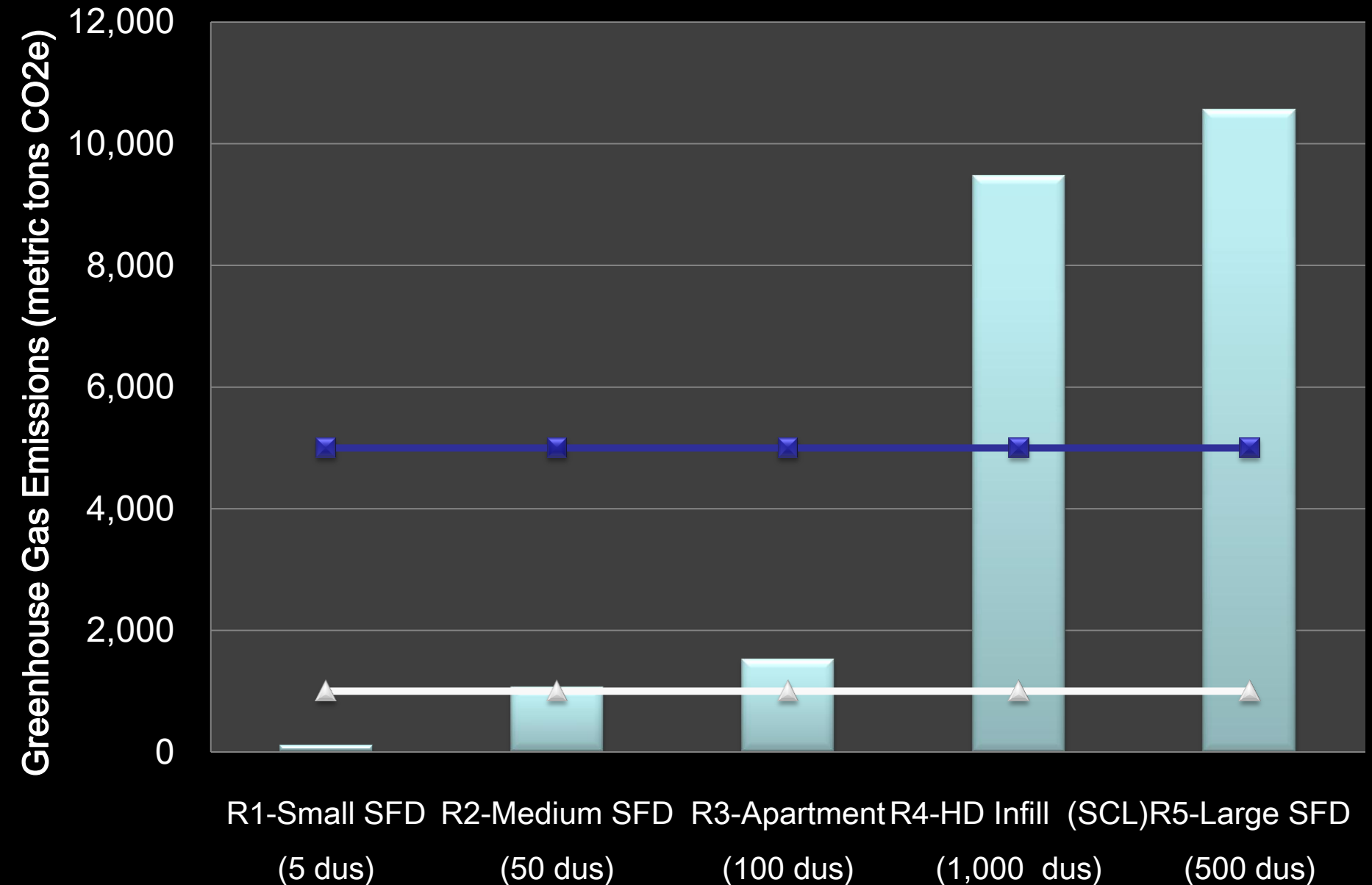
Approach 1: Regulatory Mandate Residential Thresholds

■ GHG Emissions ■ 30% Reduction Threshold ▲ 50% Reduction Threshold



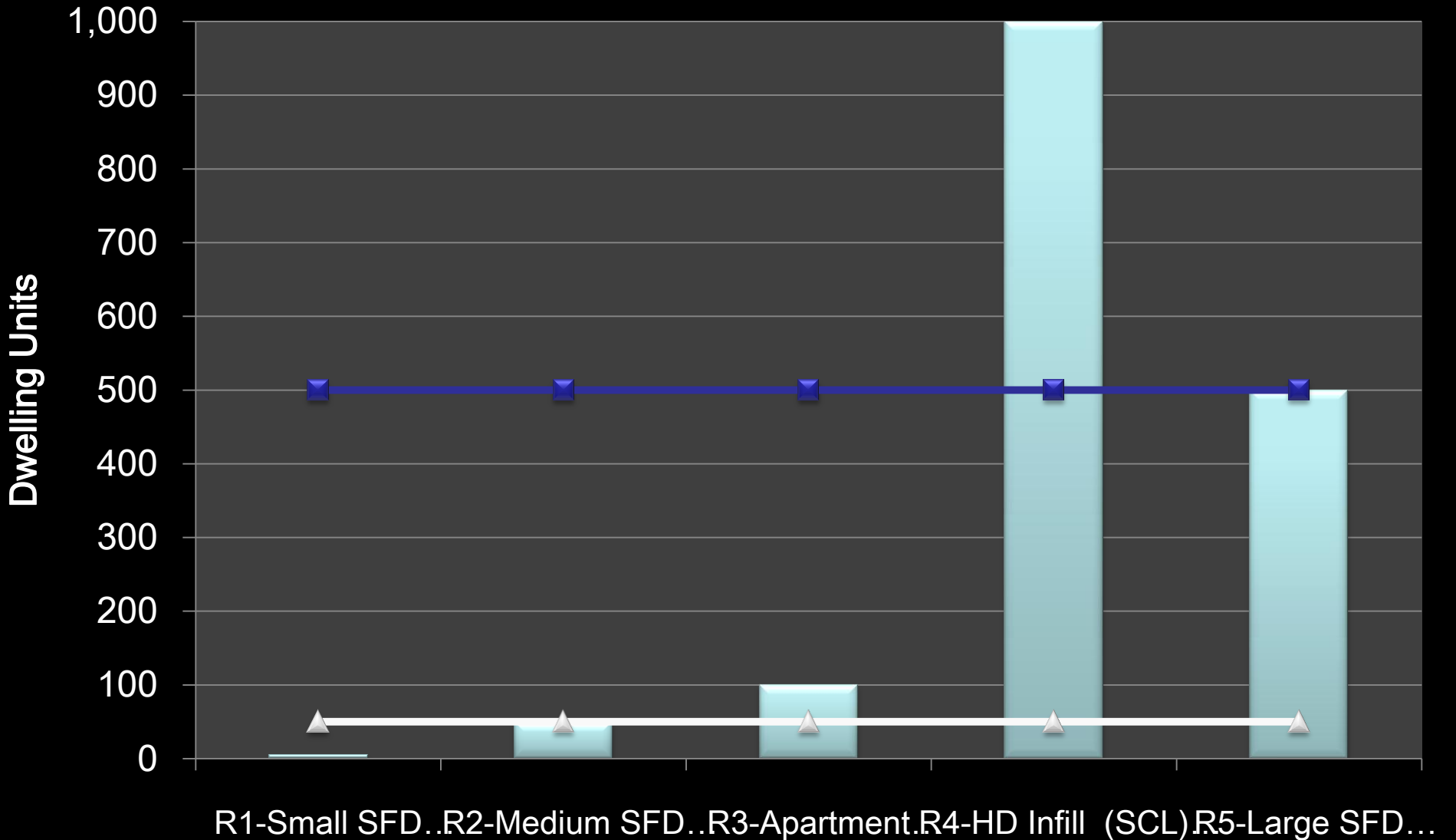
Tier 2.2: 90% Market Capture Residential Thresholds

GHG Emissions 5000-ton Threshold 1000-ton Threshold



Tier 2.5: Qualitative “90% Market Capture” Residential

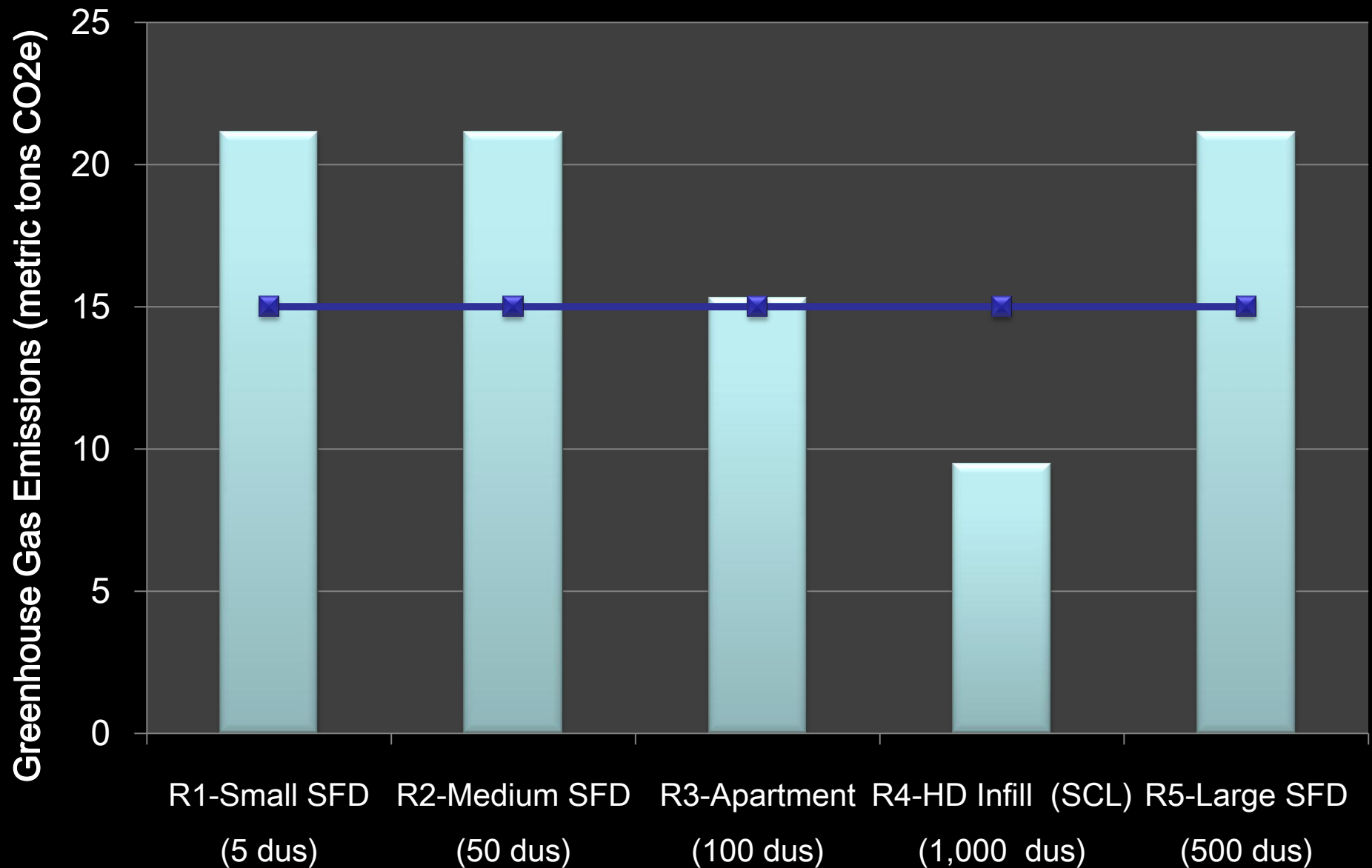
Dwelling Units Threshold 4 (500 units) Threshold 5 (50 units)



2.7: Quantitative Efficiency-Based Residential Thresholds

■ GHG Emissions/Unit

■ 15 tons/unit Threshold



How California, Massachusetts and King County are Considering Thresholds

1. What actions have significant impacts and are required to mitigate that impact? If some actions must mitigate, what is the trigger (significance threshold)?
2. If mitigation is required for specific actions, what is the compliance threshold (at what point has an action “done enough”)?

Massachusetts Approach

1. *What actions have significant impacts and are required to mitigate that impact?*
 - **MA Executive Office of Energy and Environmental Affairs determined that “damage to the environment” as used in MEPA includes GHG emissions by Projects subject to MEPA**
 - **MEPA only addresses project actions**

If some actions must mitigate, what is the trigger (significance threshold)?

- **Two screens:**
 - **Already has to submit an Environmental Impact Report**
- AND**
- **State is a project proponent or funder OR requires an Air Quality Permit OR requires a Vehicular Access Permit**

Massachusetts Approach

2. If mitigation is required for specific actions, what is the compliance threshold is (at what point has an action “done enough”)?
 - **Standard is to mitigate to the “maximum extent feasible”**
 - **Compliance is determined on a case by case basis**
 - **First of 19 current discussions**
 - **For a project of ~155,000 square feet of supermarket, restaurant and retail (7,281 vehicle trips)**
 - **MassDEP and Mass DOER recommend mitigation that results in a 14.8% reduction in emissions**

King County DRAFT Approach

1. What actions have significant impacts and are required to mitigate that impact? If some actions must mitigate, what is the trigger (significance threshold)?
 - **DRAFT King County SEPA Climate Change Ordinance Policy would require that all SEPA actions must mitigate their emissions**
 - **Rationale is that climate change is a cumulative problem, therefore all projects that generate emissions must contribute to solving it**
 - **Addresses project and non-project actions**

King County DRAFT Approach

2. If mitigation is required for specific actions, what is the compliance threshold (at what point has an action “done enough”)?
- **Required mitigation is to reduce emissions to 15% below an unmitigated scenario**
 - **Unmitigated: to develop an action to minimum legal requirements without incorporating any mitigation**
 - **Rationale of this compliance threshold is to tie it to WA state mandate**
 - **WA state near term requirement as outlined in ESSB 2815 is to reduce emissions to 1990 levels in 2020.**
 - **Requiring new actions to reduce GHGs by 15 % below average emissions in 2010 and 2011 will ensure that these new developments are equitably contributing towards achieving King County and Washington State’s climate mandates.**

CA Governor's Office of Planning and Research Guidance

1. What actions have significant impacts and are required to mitigate that impact? If some actions must mitigate, what is the trigger (significance threshold)?
 - **For now, up to the lead agency**
 - **California Senate Bill 97, August 2007:**
 - **requires the Governor's Office of Planning and Research to develop CEQA Guidelines "for the mitigation of GHG emissions or the effects of GHG emissions" by July 1, 2009 and requires that these guidelines be adopted by January 1, 2010**
 - **OPR, in collaboration with the California Resources Agency, the California Environmental Protection Agency and the California Air Resources Board is working on this effort**

CA Governor's Office of Planning and Research Guidance

2. If mitigation is required for specific actions, what is the compliance threshold (at what point has an action “done enough”)?

OPR Technical Advisory on CEQA and Climate Change

- **Must mitigate to “less than significant”**
- **CEQA requires lead agency to impose all mitigation measures necessary to reduce emissions to less than a significant level**
- **CEQA does not require mitigation to zero emissions or the implementation of measures that are infeasible for specific legal, economic, technological, or other reasons**

CA Attorney General Interpretation

1. What actions have significant impacts and are required to mitigate that impact? If some actions must mitigate, what is the trigger (significance threshold)?
 - **AG says: The lack of official thresholds and guidelines does not absolve a project proponent from the obligation under CEQA to determine the significance of the anticipated greenhouse gas emissions of a project**
 - **With the lack of defined thresholds, the AG has filed comment letters on more than 30 project and non-project actions that the AG does not believe adequately address climate change**
 - **Focus on big projects and regional plans**

CA Attorney General Interpretation

2. *If mitigation is required for specific actions, what is the compliance threshold (at what point has an action “done enough”)?*

AG recommended agencies use AB 32's 1990 target for 2020 GHG emissions as a *compliance threshold* BUT recognize that "lead agencies must rely only on their own careful judgment . . . based to the extent possible on scientific and factual data' in determining whether a project's global warming-related impacts are significant."

Settlement agreements do not specifically answer the “threshold” question but provide an indication of that a project must provide detailed examination of existing GHG, the projected increase in GHG a result of project and provide feasible enforceable mitigation for to reduce these emissions.

Non-Project Action Settlement Mitigation

Local jurisdiction must develop GHG reduction policy and plan, which includes:

- 1) an inventory of all known or reasonably discoverable sources of GHG,
- 2) an estimate of quantity of emissions associated with those emissions for 1990, the present year and projected emissions in 2020,
- 3) Setting a target to reduce GHG emissions attributable to local jurisdiction's land use decisions, and
- 4) Adopting feasible reduction measures to reach GHG reduction target.

Suggested Non-Project Action Mitigation

- High-density developments that reduce vehicle trips and utilize public transit
- Parking spaces for high-occupancy vehicles and car-share programs
- Transportation impact fees on developments to fund public transit service
- Regional transportation centers where various types of public transportation meet
- Energy efficient design for buildings, appliances, lighting and office equipment
- Methane recovery in landfills and wastewater treatment plants to generate electricity
- Carbon emissions credit purchases that fund alternative energy projects

Settlement related Project Mitigation

- GHG emissions audit of all of the company's California facilities, identify GHG reduction opportunities at all of company's California refineries, surrender a permit for its Santa Maria coke purification plant, pay \$7 million to a carbon offset fund created by the San Francisco Bay Area Air Quality Management District, \$2.8 million for reforestation and/or forest conservation projects; and \$200,000 for the restoration of local wetlands
- Conduct port-wide annual inventory of GHG emissions, which encompasses point of origin/destination for all trucks, trains, and ships, implement alternative marine power and solar project, Speed Reduction Program
- Reduce aircraft on-the-ground energy usage, inventory GHG emissions attributable to aircraft movement, replace shuttles and existing tow vehicles with electric or alternative fuel, construct all new facilities to meet LEED certification with target of silver or better and use cool roofs or solar panels and cool pavement, construction equipment running on alternative fuels, coordinate tenants to address GHG through aggressive recycling program.
- Pay \$1,000,000 for the Project's greenhouse gas emissions to a fund established and administered by the San Joaquin Valley Air Pollution Control District. This can be reduced by \$25 for each real, permanent, and verifiable metric ton of GHG emissions reductions that GVE achieves by implementing specifically stated measures

Questions for the SEPA IWG to Consider:

1. Should there be statewide guidance on significance thresholds?
 - Should there be a statewide standard for significance?
2. Should mitigation be required if a SEPA action has a significant impact?
3. Should there be statewide guidance on compliance thresholds?
 - Should there be a statewide standard for compliance?